

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 28 be amended to read as follows:

- 1           Page 11, between lines 23 and 24, begin a new paragraph and insert:  
2           "SECTION 2. IC 24-3-5-4, AS AMENDED BY P.L.160-2005,  
3           SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2008]: Sec. 4. Subject to section 4.5 of this chapter, a  
5           merchant may not mail or ship cigarettes as part of a delivery sale  
6           unless, before mailing or shipping the cigarettes, the merchant:  
7           (1) obtains from the prospective customer a written statement  
8           signed by the prospective customer under penalty of perjury:  
9           (A) providing the prospective customer's address and date of  
10          birth;  
11          (B) advising the prospective customer that:  
12              (i) signing another person's name to the statement required  
13              under this subdivision may subject the person to a civil  
14              monetary penalty of not more than one thousand dollars  
15              (\$1,000); and  
16              (ii) purchasing cigarettes by a person less than ~~eighteen (18)~~  
17              **twenty-one (21)** years of age is a Class C infraction under  
18              IC 35-46-1-10.5;  
19          (C) confirming that the cigarette order was placed by the  
20          prospective customer;  
21          (D) providing a warning under 15 U.S.C. 1333(a)(1); and  
22          (E) stating the sale of cigarettes by delivery sale is a taxable  
23          event for purposes of IC 6-7-1;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and  
 (3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

SECTION 3. IC 24-3-5-5, AS AMENDED BY P.L.160-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least ~~eighteen (18)~~ **twenty-one (21)** years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN ~~EIGHTEEN (18)~~ **TWENTY-ONE (21)** YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least ~~eighteen (18)~~ **twenty-one (21)** years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or

1 the customer's designee, in the opinion of the merchant or the  
 2 merchant's employee making the delivery, appears to be less  
 3 than twenty-seven (27) years of age.

4 (2) The commission may impose a civil penalty of not more than  
 5 one thousand dollars (\$1,000) if the merchant:

6 (A) delivers the cigarettes without first complying with section  
 7 6(a) of this chapter; or

8 (B) fails to obtain a signature and proof of identification of the  
 9 customer or the customer's designee under subdivision (1).

10 The commission shall deposit amounts collected under this  
 11 subdivision into the youth tobacco education and enforcement  
 12 fund established by IC 7.1-6-2-6.

13 SECTION 4. IC 24-3-5-8, AS AMENDED BY P.L.160-2005,  
 14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2008]: Sec. 8. The commission may impose a civil penalty of  
 16 not more one thousand dollars (\$1,000) on a:

17 (1) customer who signs another person's name to a statement  
 18 required under section 4(1) of this chapter; or

19 (2) merchant who sells cigarettes by delivery sale to a person less  
 20 than ~~eighteen (18)~~ **twenty-one (21)** years of age.

21 The commission shall deposit amounts collected under this section into  
 22 the youth tobacco education and enforcement fund established by  
 23 IC 7.1-6-2-6.

24 SECTION 5. IC 35-46-1-10 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) A person who  
 26 knowingly:

27 (1) sells or distributes tobacco to a person less than ~~eighteen (18)~~  
 28 **twenty-one (21)** years of age; or

29 (2) purchases tobacco for delivery to another person who is less  
 30 than ~~eighteen (18)~~ **twenty-one (21)** years of age;

31 commits a Class C infraction. For a sale to take place under this  
 32 section, the buyer must pay the seller for the tobacco product.

33 (b) It is not a defense that the person to whom the tobacco was sold  
 34 or distributed did not smoke, chew, or otherwise consume the tobacco.

35 (c) The following defenses are available to a person accused of  
 36 selling or distributing tobacco to a person who is less than ~~eighteen~~  
 37 **(18) twenty-one (21)** years of age:

38 (1) The buyer or recipient produced a driver's license bearing the  
 39 purchaser's or recipient's photograph, showing that the purchaser  
 40 or recipient was of legal age to make the purchase.

41 (2) The buyer or recipient produced a photographic identification  
 42 card issued under IC 9-24-16-1, or a similar card issued under the  
 43 laws of another state or the federal government, showing that the  
 44 purchaser or recipient was of legal age to make the purchase.

45 (3) The appearance of the purchaser or recipient was such that an  
 46 ordinary prudent person would believe that the purchaser or

1 recipient was not less than the age that complies with regulations  
2 promulgated by the federal Food and Drug Administration.

3 (d) It is a defense that the accused person sold or delivered the  
4 tobacco to a person who acted in the ordinary course of employment or  
5 a business concerning tobacco:

- 6 (1) agriculture;
- 7 (2) processing;
- 8 (3) transporting;
- 9 (4) wholesaling; or
- 10 (5) retailing.

11 (e) As used in this section, "distribute" means to give tobacco to  
12 another person as a means of promoting, advertising, or marketing the  
13 tobacco to the general public.

14 (f) Unless a person buys or receives tobacco under the direction of  
15 a law enforcement officer as part of an enforcement action, a person  
16 who sells or distributes tobacco is not liable for a violation of this  
17 section unless the person less than ~~eighteen (18)~~ **twenty-one (21)** years  
18 of age who bought or received the tobacco is issued a citation or  
19 summons under section 10.5 of this chapter.

20 (g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under  
21 this section must be deposited in the Richard D. Doyle youth tobacco  
22 education and enforcement fund (IC 7.1-6-2-6).

23 SECTION 6. IC 35-46-1-10.2 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10.2. (a) A retail  
25 establishment that sells or distributes tobacco to a person less than  
26 ~~eighteen (18)~~ **twenty-one (21)** years of age commits a Class C  
27 infraction. For a sale to take place under this section, the buyer must  
28 pay the retail establishment for the tobacco product. Notwithstanding  
29 IC 34-28-5-4(c), a civil judgment for an infraction committed under  
30 this section must be imposed as follows:

- 31 (1) If the retail establishment at that specific business location has  
32 not been issued a citation or summons for a violation of this  
33 section in the previous ninety (90) days, a civil penalty of fifty  
34 dollars (\$50).
- 35 (2) If the retail establishment at that specific business location has  
36 had one (1) citation or summons issued for a violation of this  
37 section in the previous ninety (90) days, a civil penalty of one  
38 hundred dollars (\$100).
- 39 (3) If the retail establishment at that specific business location has  
40 had two (2) citations or summonses issued for a violation of this  
41 section in the previous ninety (90) days, a civil penalty of two  
42 hundred fifty dollars (\$250).
- 43 (4) If the retail establishment at that specific business location has  
44 had three (3) or more citations or summonses issued for a  
45 violation of this section in the previous ninety (90) days, a civil  
46 penalty of five hundred dollars (\$500).

1 A retail establishment may not be issued a citation or summons for a  
 2 violation of this section more than once every twenty-four (24) hours  
 3 for each specific business location.

4 (b) It is not a defense that the person to whom the tobacco was sold  
 5 or distributed did not smoke, chew, or otherwise consume the tobacco.

6 (c) The following defenses are available to a retail establishment  
 7 accused of selling or distributing tobacco to a person who is less than  
 8 ~~eighteen (18)~~ **twenty-one (21)** years of age:

9 (1) The buyer or recipient produced a driver's license bearing the  
 10 purchaser's or recipient's photograph showing that the purchaser  
 11 or recipient was of legal age to make the purchase.

12 (2) The buyer or recipient produced a photographic identification  
 13 card issued under IC 9-24-16-1 or a similar card issued under the  
 14 laws of another state or the federal government showing that the  
 15 purchaser or recipient was of legal age to make the purchase.

16 (3) The appearance of the purchaser or recipient was such that an  
 17 ordinary prudent person would believe that the purchaser or  
 18 recipient was not less than the age that complies with regulations  
 19 promulgated by the federal Food and Drug Administration.

20 (d) It is a defense that the accused retail establishment sold or  
 21 delivered the tobacco to a person who acted in the ordinary course of  
 22 employment or a business concerning tobacco:

23 (1) agriculture;

24 (2) processing;

25 (3) transporting;

26 (4) wholesaling; or

27 (5) retailing.

28 (e) As used in this section, "distribute" means to give tobacco to  
 29 another person as a means of promoting, advertising, or marketing the  
 30 tobacco to the general public.

31 (f) Unless a person buys or receives tobacco under the direction of  
 32 a law enforcement officer as part of an enforcement action, a retail  
 33 establishment that sells or distributes tobacco is not liable for a  
 34 violation of this section unless the person less than ~~eighteen (18)~~  
 35 **twenty-one (21)** years of age who bought or received the tobacco is  
 36 issued a citation or summons under section 10.5 of this chapter.

37 (g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under  
 38 this section must be deposited in the Richard D. Doyle youth tobacco  
 39 education and enforcement fund (IC 7.1-6-2-6).

40 (h) A person who violates subsection (a) at least six (6) times in any  
 41 six (6) month period commits habitual illegal sale of tobacco, a Class  
 42 B infraction.

43 SECTION 7. IC 35-46-1-10.5 IS AMENDED TO READ AS  
 44 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10.5. (a) A person:

45 (1) less than ~~eighteen (18)~~ **twenty-one (21)** years of age who (~~+~~)  
 46 purchases tobacco; **or**

(2) **less than eighteen (18) years of age who** accepts tobacco for personal use or

~~(3)~~ possesses tobacco on ~~his~~ **the person's** person; commits a Class C infraction.

(b) It is a defense under subsection (a) that the accused person acted in the ordinary course of employment in a business concerning tobacco:

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

SECTION 8. IC 35-46-1-11.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age to enter the retail establishment.

(b) An individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment a sign in boldface type that states "NOTICE: It is unlawful for a person less than ~~18~~ **21** years old to enter this store."

(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the person has not been cited for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the person has had one (1) violation in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the person has had two (2) violations in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the person has had three (3) or more violations in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A person may not be cited more than once every twenty-four (24) hours.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 9. IC 35-46-1-11.8, AS ADDED BY P.L.37-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11.8. (a) As used in this section, "self-service display" means a display that contains cigarettes in an area where a customer:

(1) is permitted; and

(2) has access to the cigarettes without assistance from a sales person.

(b) This section does not apply to a self-service display located in a retail establishment that:

(1) has a primary purpose to sell cigarettes; and

(2) prohibits entry by persons who are less than ~~eighteen (18)~~ **twenty-one (21)** years of age.

(c) The owner of a retail establishment that sells or distributes cigarettes through a self-service display, other than a coin operated machine operated under IC 35-46-1-11 or IC 35-46-1-11.5, commits a Class C infraction.

(d) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

**SECTION 10. [EFFECTIVE JULY 1, 2008] (a) As used in this SECTION, "distribute" means to give tobacco product to another person as a means of promoting, advertising, or marketing the tobacco product to the general public.**

**(b) As used in this SECTION, "tobacco products" has the meaning set forth in IC 7.1-6-1-3.**

**(c) Notwithstanding IC 24-3-5-4(1)(B)(ii), IC 24-3-5-5, and IC 24-3-5-8, all as amended by this act, the notice, mailing, shipping, customer designation, and penalty requirements that apply to a person who is less than twenty-one (21) years of age apply to a person who on June 30, 2008 is less than eighteen (18) years of age.**

**(d) Notwithstanding IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-10.5, IC 35-46-1-11.7, and IC 35-46-1-11.8, all as amended by this act:**

**(1) a person who on June 30, 2008, is at least eighteen (18) years of age may purchase and possess tobacco products; and**

**(2) a merchant or retailer may:**

**(A) sell or distribute tobacco products;**

**(B) allow entry into a retail establishment that has as its primary purpose the sale of tobacco products; and**

**(C) allow access to a self-service cigarette display;**

- 1           **to a person who on June 30, 2008, is at least eighteen (18)**
- 2           **years of age.**
- 3           **(e) This SECTION expires July 1, 2011."**
- 4           Renumber all SECTIONS consecutively.  
(Reference is to ESB 28 as printed February 15, 2008.)

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Representative Thompson